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INFORMATION

Date 5005-1, 1995

Signature [REDACTED] Department of the Treasury

Internal Revenue Service

Washington, DC 20224

Person to Contact: [REDACTED]

Telephone Number: [REDACTED]

Refer Reply to: CP:E:EO:T:1

Date: JUN 13 1995

Employer Identification Number: [REDACTED]
Key District: Brooklyn

Dear Applicant:

We have considered your application for exemption from Federal income tax under section 501(c)(9) of the Internal Revenue Code.

The information submitted discloses that you were formed to provide medical benefits to eligible members of the [REDACTED] and [REDACTED] and their employees. Eligibility for membership is predicated upon a dentist being a member in good standing of the Societies. Further, if the member accepts enrollment, the employees of his dental practice, who are actively at work, may also apply for enrollment in the plan.

You state that there are [REDACTED] persons entitled to receive benefits. Included in that number are [REDACTED] persons who are other than employees and their dependents.

Section 501(c)(9) of the Code provides for the exemption from Federal income tax of voluntary employees' associations providing for the payment of life, sick, accident, or other benefits to the members of such association or their dependents or designated beneficiaries, if no part of the net earnings of such association inures (other than through such payments) to the benefit of any private shareholder or individual.

Section 1.501(c)(9)-2(a)(1) of the Income Tax Regulations states, in part, that the membership of an organization described in section 501(c)(9) must consist of individuals who become entitled to participate by reason of their being employees and whose eligibility for membership is defined by reference to objective standards that constitute an employment-related common bond among such individuals. Employees of one or more employers engaged in the same line of business in the same geographic locale will be considered to share an employment related common bond for purposes of an organization through which their employers provide benefits. The regulations further state that exemption will not be denied merely because the membership of an association includes individuals who are not employees (within

the meaning of paragraph b of this section) provided that such individuals share an employment related bond with the employee-member. Such individuals may include, for example, the proprietor of a business whose employees are members of the association. For purposes of the preceding two sentences, an association will be considered to be composed of employees if 90 percent of the total membership of the association on one day of each quarter of the association's taxable year consists of employees (within the meaning of paragraph b of this section).

Section 1.501(c)(9)-2(b) of the regulations states, in part, that whether an individual is an "employee" is determined by reference to the legal and bona fide relationship of employer and employee. The term "employee" includes the following:

- (1) An individual who is considered an employee:
 - (i) For employment tax purposes under Subtitle C of the Internal Revenue Code and the regulations thereunder, whether or not the individual could qualify as an employee under applicable common law rules.

Section 31.3121(d)-1(c)(2) of the Employment Tax Regulations provides, in part, that an individual performing services as an independent contractor is not as to such services an employee under the usual common law rules. Individuals such as physicians, lawyers, and dentists engaged in the pursuit of an independent trade, business, or profession, in which they offer their services to the public, are independent contractors and not employees.

Since your membership consists of more than 10% of individuals who are not employees within the meaning of section 1.501(c)(9)-2(b) of the regulations, you are not considered as an organization described in section 501(c)(9) of the Code. Therefore, you are not entitled to exemption from Federal income tax under section 501(c)(9) of the Code and you are required to file Federal income returns.

You have the right to protest this ruling if you believe that it is incorrect. To protest, you should submit a statement of your views, with a full explanation of your reasoning. This statement must be submitted within 30 days of the date of this letter and must be signed by one of your officers. You also have a right to a conference in this office after your statement is submitted. If you want a conference, you must request it when you file your protest statement. If you are to be represented by someone who is not one of your officers, he/she must file a proper power of attorney and otherwise qualify under our Conference and Practice Requirements.

If we do not hear from you within 30 days, this ruling will become final and copies will be forwarded to your key District

Director. Thereafter, if you have any questions about your federal income tax status, including questions concerning reporting requirements, please contact your key District Director.

Sincerely,

(signed)

Chief, Exempt Organizations
Rulings Branch 1